

CHAPTER 1

CONSERVANCY DISTRICTS

This chapter is designed to summarize certain laws and regulations relevant to conservancy districts. Please refer to the Indiana Code and other related documents for a complete listing of laws and regulations governing conservancy districts. See chapters 10 through 23 of this manual for additional Accounting and Uniform Compliance Guidelines.

PURPOSES OF A DISTRICT

A conservancy district may be established for any of the following purposes:

- (1) Flood prevention and control.
- (2) Improving drainage.
- (3) Providing for irrigation.
- (4) Providing water supply, including treatment and distribution, for domestic, industrial, and public use.
- (5) Providing for the collection, treatment, and disposal of sewage and other liquid wastes.
- (6) Developing forests, wildlife areas, parks, and recreational facilities if feasible in connection with beneficial water management.
- (7) Preventing the loss of topsoil from injurious water erosion.
- (8) Storage of water for augmentation of stream flow.
- (9) Operation, maintenance, and improvement of:
 - (A) A work of improvement for water based recreational purposes; or
 - (B) Other work of improvement that could have been built for any other purpose authorized by IC 14-33-1-1.

ESTABLISHMENT

IC 14-33-2 lists the procedures to establish a district through petition of the circuit court.

BOUNDARIES

IC 14-33-3 and IC 14-33-4 contain the regulations over determining the district's boundaries. IC 14-33-3-1 allows for a city or town to be included within such boundaries.

BOARD OF DIRECTORS - COMPENSATION

The directors are entitled to an amount that the court orders, but not to exceed fifty dollars (\$50) for each day devoted to the work of the district. [IC 14-33-5-16]

BOARD OF DIRECTORS - MILEAGE REIMBURSEMENT

In addition to compensation previously described, the directors shall be reimbursed for actual expenses, including traveling expenses at a rate equal to the rate paid to state officers and employees. [IC 14-33-5-16]

The current mileage rate allowed to state officers and employees is forty cents (40¢) per mile.

BOARD OF DIRECTORS - APPOINTMENTS

The board may appoint, prescribe the duties, and fix the compensation of the following:

- (1) A secretary.
- (2) A financial clerk.
- (3) An engineer.
- (4) Employees that are necessary for the discharge of duties and responsibilities of the board. [IC 14-33-5-18(a)]

OFFICIAL BOND - FINANCIAL CLERK

A financial clerk shall execute a surety bond in the manner prescribed by IC 5-4-1. [IC 14-33-5-18(b)]

DUTIES OF THE BOARD

The board shall do the following:

- (1) Exercise general supervision of and make regulations for the administration of the affairs of the district.
- (2) Prescribe uniform rules pertaining to investigations and hearings.
- (3) Supervise the fiscal affairs and responsibilities of the district.
- (4) Prescribe the qualifications of, appoint, remove, and fix the compensation of the employees of the district. The compensation must be reasonable and similar in amount to the compensation allowed employees performing similar service for the state and political subdivisions of the state. The board may delegate to employees authority to perform ministerial acts in all cases except where final action of the board is necessary.
- (5) Keep an accurate and complete record of all district proceedings and record and file all bonds and contracts, assuming responsibility for the custody and preservation of all papers and documents of the district.

- (6) Make an annual report to the court of income and expenses. The report must be submitted not later than thirty (30) days after the annual meeting and may include any of the following:
 - (A) A statement of the progress in accomplishing each purpose for which the district is established.
 - (B) Recommendations for amendment to the district plan.
 - (C) Any matter that the board believes should be brought to the attention of the court for instructions or approval.
- (7) Adopt a seal and certify all official acts.
- (8) Sue and be sued collectively by the legal name "_____ Conservancy District," with service of process made on the chairman of the board. However, costs may not be taxed against the directors individually in an action.
- (9) Invoke any legal, equitable, or special remedy for the enforcement of this article or of any proper action of the board in a court.
- (10) If advisable, establish an advisory committee.
- (11) Exercise the powers granted under IC 14-33 to accomplish each purpose for which the district is established.
- (12) If a purpose of the district is the construction or maintenance of a levee in cooperation with the United States Secretary of the Army, divide, by resolution, the levee into maintenance sections and make assignment of each section to a director who must be a resident freeholder near the maintenance section. The director shall, upon assignment, supervise and assist in the maintenance of the assigned maintenance section.
- (13) Protect against encroachment by a stream. The board may, alone or in cooperation with state or federal agencies, do whatever is necessary to provide bank stabilization for the protection of the works of improvement of the district.
- (14) Insure property, personnel, and operations of the district against risks and in amounts that the board determines necessary to protect the district. [IC 14-33-5-20]

ISSUANCE OF REVENUE BONDS

If the board issues revenue bonds for the collection, treatment, and disposal of sewage and liquid waste, the board may do the following:

- (1) Establish just and equitable rates and charges and use the same basis for the rates as provided in IC 36-9-23-25 through IC 36-9-23-29.
- (2) Collect and enforce the rates, beginning with the commencement of construction as provided in IC 36-9-23.
- (3) Establish rules and regulations.

- (4) Require connection to the board's sewer system of any property producing sewage or similar waste and require discontinuance of use of privies, cesspools, septic tanks, and similar structures. The board may enforce this requirement by civil action in circuit or superior court as provided in IC 36-9-23-30.
- (5) Provide for and collect a connection charge to the board's sewer system as provided in IC 36-9-23-25 through IC 36-9-23-29.
- (6) Contract for treatment of the board's sewage and pay a fair and reasonable connection fee or rate for treatment, or a combination of both, as provided in IC 36-9-23-16.
- (7) Secure the bonds by a trust indenture as provided in IC 36-9-23-22.
- (8) Create a sinking fund for the payment of principal and interest and accumulate reasonable reserves as provided in IC 36-9-23-21.
- (9) Issue temporary revenue bonds to be exchanged for definite revenue bonds as provided in IC 36-9-23-17 through IC 36-9-23-20.
- (10) Issue additional revenue bonds as part of the same issue if the issue does not meet the full cost of the project for which the bonds were issued as provided in IC 36-9-23-17 through IC 36-9-23-20.
- (11) Issue additional revenue bonds for improvements, enlargements, and extensions as provided in IC 36-9-23-18.
- (12) Covenant with the holders of the revenue bonds for the following:
 - (A) Protection of the holders concerning the use of money derived from the sale of bonds.
 - (B) The collection of necessary rates and charges and segregation of the rates and charges for payment of principal and interest.
 - (C) Remedy if a default occurs.

The covenants may extend to both repayment from revenues and other money available to the district by other statute as provided in IC 36-9-23. [IC 14-33-5-21(a)]

RATES OR CHARGES AS LIEN - SEWAGE DISPOSAL

In the same manner as provided by IC 36-9-23, the rates or charges made, assessed, or established by the district are a lien on a lot, parcel of land, or building that is connected with or uses the works by or through any part of the sewage system of the district. The liens:

- (1) Attach;
- (2) Are recorded;
- (3) Are subject to the same penalties, interest, and reasonable attorney's fees on recovery; and
- (4) Shall be collected and enforced;

in substantially the same manner as provided in IC 36-9-23-31 through IC 36-9-23-32. [IC 14-33-5-21(b)]

DISTRICT PLAN

IC 14-33-6 requires a conservancy district to file a district plan with the court. Any amendments to the plan must be approved by the court.

SPECIAL BENEFITS TAX

All the real property in the district, except the property that is exempt under IC 14-33-7-4, constitutes a taxing district for the purpose of levying special benefit taxes to pay for the following:

- (1) The expenses of establishing the district.
- (2) General preliminary and administrative expenses.
- (3) The expenses of preparing the district plan.
- (4) The expenses of putting the district plan into operation by constructing the necessary works.
- (5) The expenses of operating and maintaining the district.

The special tax must equal the amount of benefits received and must be based on return for the benefits. [IC 14-33-7-1] The special benefits tax rate may not exceed six and sixty-seven hundredths cents (\$0.0667) on each one hundred dollars (\$100) of assessed valuation of property in the taxing district. [IC 14-33-7-3]

Property used by church or religious groups is generally exempt from special benefit taxes. [IC 14-33-7-4]

ADDITIONAL REVENUE

The expenses and obligations of the district may also be paid from any of the following:

- (1) The receipt of gifts from any source.
- (2) The receipt of money from the federal or state government.
- (3) The receipt of revenue from the sale of services or property produced incident to the accomplishment of a purpose for which the district is established.
- (4) The collection of assessments from land that receives exceptional benefits from the operation of the district plan.
- (5) The collection of assessments for maintenance and operation of the works of improvement.
[IC 14-33-7-5]

ISSUANCE OF NOTES

In anticipation of the money to be received from any source, a board may borrow money by issuing notes. The notes must mature in not more than two (2) years and may be renewed for periods of not more than two (2) years. The borrowing may be by direct negotiation with a bank or savings association licensed to do business in Indiana or an agent of the state or federal government.
[IC 14-33-7-14]

BUDGET AND TAX LEVY PROCEDURES

The budget of a district must be prepared and submitted at the same time and in the same manner and with notice as is required by statute for the preparation of budgets of municipalities and is subject to the same review by the county board of tax adjustment and the Indiana Department of Local Government Finance. [IC 14-33-9-1]

COLLECTION OF TAXES

The county auditor of each county containing land in a district shall enter the tax levy on the tax records of the county treasurer for collection. The tax shall be collected and distributed in the same manner as property taxes. [IC 14-33-9-5]

BONDS

The board may issue bonds to pay for: 1) the cost of the works that are provided in the district plan; 2) necessary engineering, legal, and administrative fees; or 3) the repayment or refinancing of a loan. [IC 14-33-11-1]

The total amount of bonds issued may not exceed the cost less: 1) money on hand from the collection of assessments; or 2) money on hand or obligated to the district by the state or federal government. [IC 14-33-11-2]

Bonds may be issued solely against the revenues expected to be produced by the operation of the district or against the real property of the district in anticipation of the collection of special benefits taxes. Bonds issued against the real property of the district may be paid in part by revenues derived from reasonable charges for services or property produced incident to the operation of the district or from the collection of assessments for exceptional benefits. [IC 14-33-11-3]

Revenue bonds issued for the payment of works of improvement for the collection, treatment, and disposal of sewage and other liquid wastes may provide that the principal and interest shall be paid solely from the net revenue of the sewage works, which is gross revenues after deduction only for the reasonable expenses of operation and maintenance, or from a combination of net revenue and other money available to a district by levy, special benefits taxes or assessment of exceptional benefits. The board may covenant with the holders of the bonds to pay: 1) a certain percentage of principal and interest from the revenue; 2) a certain percentage from the other money to maintain a reasonable reserve from the other money that may be used for payment of principal and interest if the revenue is not sufficient; or 3) both. [IC 14-33-11-4]

IC 14-33-11-5 through IC 14-33-11-9 establishes guidelines for the form of bonds, specifics regarding issuance of bonds and a process for remonstrance against the issuance of bonds.

TAX STATEMENT PROCESSING CHARGE

A district may require a statement processing charge on a special benefits tax statement. A special benefits tax liability assessed of less than ten dollars (\$10) on a parcel may be increased to not more than ten dollars (\$10). The difference between the actual liability and the amount that appears on the statement is a statement processing charge that is considered part of the tax liability. [IC 14-33-9-10]

EXCEPTIONAL BENEFITS ASSESSMENTS

If the appraisers described in IC 14-33-9 have determined that there are exceptional benefits to some real property, the board of directors shall prepare an assessment roll from the appraisers' report as approved by the court. The assessment roll shall consist of a description of each parcel of real property exceptionally benefited, the name of the owner thereof, as is listed on the tax duplicate or described in the appraisers' report as approved by the court, and the amount of the assessment. One (1) copy of the assessment roll shall be recorded in the office of the recorder of each county wherein real property exceptionally benefited is located, one (1) copy shall be filed with the auditor of each county in which land of a district exceptionally benefited is located, and another copy shall be kept on file in the office of the conservancy district. Assessments for exceptional benefits shall be a lien upon each parcel of real property against which they are assessed from the date that such assessment is approved by the court. [IC 14-33-10-1]

The board of directors shall publish notice, at least two times at weekly intervals, that the assessments are due and payable within sixty (60) days after the date of the last publication. Payment shall be made at the office of the board of directors or, if the court shall so order, at the office of the treasurer of each affected county.

The owners of real property assessed for exceptional benefits are entitled to make payment in full unless exceptional benefits are assessed annually and paid with special benefits taxes to the county treasurer. If payment is made in full, the board of directors shall note such payment on the assessment roll in its office, give a receipt to the landowner paying the assessment, and also enter satisfaction of the lien of such assessment in the appropriate record in the office of the recorder where such assessment is recorded. The payment of the assessment does not relieve the real property from being subject to any special benefits tax and from being subjected to an annual assessment for maintenance and operation based upon the original exceptional benefit assessment. [IC 14-33-10-2]

IC 14-33-10-4 lists provisions for enforcing payment of delinquent assessments through the real estate tax sale statutes.

CUMULATIVE MAINTENANCE FUND

A district having channel improvements, levees and water retarding or impoundment structures shall establish a cumulative maintenance fund in the year following commencement of construction or assumption or maintenance of the channel improvements, levees, and water retarding or impoundment structures so that the works of improvement are adequately maintained. The requirement to establish a cumulative maintenance fund does not apply to a water supply structure or the water supply part of a multiple purpose structure if provision has been made for maintenance from revenues of a water system, nor does it apply to sewage works.

The board shall budget and appropriate annually to the fund an amount equivalent to ten percent (10%) of the annual cost of maintenance for the works of improvement as the cost is stated in the district plan or adjusted under IC 14-33-14-8. Money accumulated in the fund may be used for emergency or unusually expensive maintenance of the works of improvement.

If an amount equivalent to two (2) times the annual cost of maintenance of the works of improvement, as stated in the district plan or as the cost is adjusted under IC 14-33-14-8, has accumulated in the fund, appropriations to the fund shall be suspended until the year that the amount in the fund is not more than equal to the annual cost of maintenance of the works of improvement as stated in the plan or the adjusted annual cost. The money may be invested and reinvested in whole or in part in accordance with IC 5-13-9.

The appropriation to the fund does not relieve the board of the duty to budget annually the normal maintenance work anticipated during the next fiscal year. [IC 14-33-14]

IC 14-33-14-8, which became effective July 1, 2003, states:

“(a) As used in this section, “cost index source” refers to the Engineering News Record Construction Cost Index, as published by McGraw Hill Construction or its successor.

(b) Before January 1, 2006, the board of a district may elect to adjust the annual cost of maintenance of the works of improvement as stated in the plan, as calculated in subsection (d), if the following conditions are met:

(1) The board has at a meeting adopted a resolution that sets forth:

(A) the annual cost of maintenance of the works of improvement as stated in the plan, and the year when the annual cost was stated in the plan; and

(B) the new, adjusted annual cost of maintenance of the works of improvement.

(2) The calculation under subsection (d) has been verified by either the state conservation engineer for the Natural Resources Conservation Service of the United States Department of Agriculture or a professional engineer licensed under IC 25-31-1.

(3) The board has provided a copy of the resolution to the department of local government finance (established by IC 6-1.1-30-1.1) within sixty (60) days of adoption.

(c) If the board of a district adopts a resolution under section (b)(1), a copy of the resolution must be included in the district's annual report, and a copy of the annual report must be provided to the local circuit court and the department of natural resources.

(d) The annual cost of maintenance of the works of improvement as stated in the plan of a district may be adjusted to an amount not to exceed the amount determined as follows:

STEP ONE: Determine the cost index from the cost index source for the most recent year.

STEP TWO: Determine the cost index from the cost index source for the year that the annual cost of maintenance of the works of improvement was stated in the plan.

STEP THREE: Divide the number determined in STEP ONE by the number determined in STEP TWO.

STEP FOUR: Multiply the result of STEP THREE by the annual cost of maintenance of the works of improvement that is stated in the plan.”

CUMULATIVE IMPROVEMENT FUND

IC 14-33-21 allows a district to establish a cumulative improvement fund to provide money for the construction, additional construction, or repair of the works of improvement the district is authorized to construct. The purpose of the fund must be stated in the district plan or amendment to the plan.

To provide money for the fund, the board may place in the fund the following:

(1) Gifts or grants from a person or state or federal agency.

(2) Receipts of revenue from the sale of services or property produced incident to the accomplishment of the purpose for which the district is organized.

- (3) Any other form of miscellaneous receipt, including tap-in fees and connection fees.
- (4) Levy of a special benefits tax in accordance with IC 14-33-21-5 through IC 14-33-21-10.
- (5) Collection of the exceptional benefits assessments or installments of the assessments, but only in accordance with IC 14-33-21-11.

The board may levy a special benefits tax in compliance with IC 6-1.1-41 in an amount not to exceed three and thirty-three hundredths cents (\$0.0333) on each one hundred dollars (\$100) of real property in the district, except the property that is exempt under IC 14-33-7-4. The board shall file with the district plan or part of or amendment to the plan:

- (1) The approval of the Indiana Department of Local Government Finance; and
- (2) Any action taken to reduce or rescind the tax levy.

The approval of the Indiana Department of Local Government Finance:

- (1) Does not have to be filed with the district plan or part of or amendment to the plan at the time of the submission to the commission; and
- (2) Only has to be filed with the court having jurisdiction of the district.

A tax levy may be reduced or rescinded by an approved amendment to the district plan.

WATER SUPPLY SYSTEMS

IC 14-33-20 allows a district to be established for the purpose of furnishing a water supply or to add such purpose to its district plan. Such water supply system rates and charges would be under the jurisdiction of the Indiana Utility Regulatory Commission. Financial accounting and reporting requirements for such systems would be the same as prescribed for municipally owned water utilities.